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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ANTHONY RAPP AND C.D.,

4 Plaintiffs,

5 v.

20 CV 9586 (LAK)

Remote Oral Argument

6 KEVIN SPACEY FOWLER,

7 Defendant.

8 -----x

New York, N.Y.

9 February 23, 2021

2:02 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES VIA TELEPHONE

14 GAIR, GAIR, CONASON, RUBINOWITZ, BLOOM, HERSHENHORN, STEIGMAN
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(The Court and all parties appearing telephonically)

(Case called)

THE DEPUTY CLERK: Counsel for plaintiffs, are you ready?

MR. STEIGMAN: I am. Thank you.

Good afternoon, your Honor.

THE DEPUTY CLERK: Counsel for defendant, are you ready?

MR. SCOLNICK: We are ready. Good afternoon, your Honor.

THE COURT: Good afternoon. I think this technically is your application, Mr. Scolnick; is that right?

MR. SCOLNICK: That's correct.

THE COURT: And we, of course, are going to get into the other motion also, but let's go ahead.

MR. SCOLNICK: Yes, your Honor. In plaintiff's reply to the motion in limine, they submitted what we believe to be an inappropriate piece of evidence, the declaration of Dr. Block. We believe that it should be stricken from the record because it's untimely filed. Rule 6 requires that supporting evidence and declarations be filed with the initial motion. This wasn't. It was filed for the first time in the reply. We believe there's no basis for it to be filed for the first time in the reply. It's something that should have been available at the time the motion was filed.

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1 THE COURT: How are you prejudiced?

2 MR. SCOLNICK: How are we prejudiced? Well, a couple
3 of reasons, your Honor. One, we weren't able to address it in
4 our opposition, and it appears that -- it appears that it
5 suffers from the same problems as the initial declaration of
6 Mr. Bonavita. So really, there are more questions than
7 answers. Had we been able to flush this out and address it in
8 our opposition, then presumably plaintiffs would have been able
9 to, or should have been required to, provide additional
10 information in their reply and they still haven't done so yet,
11 your Honor.

12 This, objectively, the declaration of Dr. Block is
13 unreliable. It appears that there's no information regarding
14 the context of the evaluation. There's no information
15 regarding when the evaluation was conducted. It is entirely
16 conclusionary. It doesn't really address the issues that it
17 should. It appears, based on our limited research, that
18 Dr. Block is not a treating physician. Although, they did not
19 disclose it in the declaration or in their papers, it appears
20 that Dr. Block is a retained, forensic psychiatrist, who is
21 providing an expert opinion. Although, that was not disclosed.

22 Further, it appears, just looking at the text of the
23 exhibit, that it's deliberately vague. And what I mean by
24 that, your Honor, again, is that there's no information
25 regarding when the visits happened, what they addressed, what

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1 the discussions were, the context of the those and his
2 experience with CD.

3 And in addition, even if the Court does consider it,
4 it should be given little weight because, by its own admission,
5 Dr. Block's examination was limited to a handful of hours, and
6 there's no mention of the Vulture article. CD's participation
7 in the Vulture article seems to directly undermine many of the
8 conclusions in his evaluation, saying that CD would be somehow
9 harmed if he is named by the press, or if his name is
10 disclosed.

11 While, obviously, as we know, CD deliberately sought
12 out the press, and he interviewed with Vulture; so the absence
13 of that information is telling and speaks volumes, your Honor.
14 It means one of two things, either CD and his attorney did not
15 tell Dr. Block that he deliberately sought out the press and
16 chose to make his allegations public and chose to provide the
17 press with many details regarding his own personal life,
18 including his allegations, including other allegations of his
19 sexual activity, and including additional people that Vulture
20 can go out and verify the information with; or that doctor was
21 told not to include that in his report.

22 Either way, it should undermine the credibility of the
23 declaration. And in addition, there's really nothing in the
24 declaration that goes to the doctor's reasoning or the basis
25 for his conclusionary statements. There's nothing in the

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1 declaration that would differentiate or distinguish any of the
2 alleged impact the doctor believes the disclosure would have
3 versus the alleged problem that would go along with
4 participating in a case of this type, including being deposed,
5 including going to trial, including going through discovery.

6 All of these things are necessary in the case, and my
7 understanding is that, based on my conversations with
8 plaintiffs' counsel, they're not going to seek to have CD's
9 name -- CD remain anonymous throughout the trial. So that
10 means what we're dealing with here is a question of not when
11 the name is disclosed -- if the name will be disclosed,
12 whether, but when.

13 So given all of those factors, your Honor, given
14 what's missing from the declaration itself, given how the
15 declaration is suspect, and more to the heart of the motion,
16 given that it's untimely filed, we don't believe the
17 declaration should be considered. It should be stricken, and
18 if it is considered, we believe it should be given very little
19 weight.

20 THE COURT: Okay. Thank you.

21 Now, Mr. Steigman, is the last thing that Mr. Skolnik
22 said accurate, that is to say, that you do not expect or intend
23 to have the identity of CD remain confidential throughout the
24 proceedings in this court?

25 MR. STEIGMAN: It is not, your Honor. It is not

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1 and --

2 (Pause)

3 MR. STEIGMAN: I have the volume turned up to a
4 hundred. So I apologize to the Court. I conducted a five-hour
5 deposition yesterday and we were okay. So I'm not sure why
6 things are not working today, but can the Court hear me at all
7 now?

8 THE COURT: Well, I'm hearing you right this minute.

9 MR. STEIGMAN: All right. I'm going to keep my voice
10 up as best I can. The court reporter and your Honor, please
11 tell me if you can't hear anything. And again, I apologize.

12 But, no, what Mr. Scolnick said does not, in fact,
13 comport with my understanding. We do believe that his identity
14 should be kept confidential throughout the entire proceeding.
15 And, in fact, you know, I'm old enough to remember when, for
16 example, the William Kennedy Smith rape trial was televised on
17 national television, and the victim in that case testified on
18 television and her identity -- her appearance, were kept
19 confidential at that point by the Court and the media.

20 So as we move forward, if the Court would grant our
21 application, the Court can always revisit the circumstances of
22 the confidentiality. But, no, it is not plaintiff's intention
23 that that confidentiality ever be lifted.

24 And, in fact, what Mr. Scolnick says really does, I
25 think, when the Court were to think of it that way, it really

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1 does suggest at this point all of the factors really weigh in
2 favor of protecting this person, who has come forward to claim,
3 as this Court knows, that he was a victim of this man as a
4 minor. I can certainly understand if this case goes to trial,
5 and you will hear his testimony, and if you said to yourself,
6 you know, this is all phony, I don't think this ever happened,
7 he's not really victimized, this is a very popular defendant,
8 and the world has a right to know the kind of person he is to
9 have come forward and done a thing like this, and even after a
10 verdict, to reveal his identity. Under those circumstances, I
11 can see that being a very appropriate thing.

12 On the other hand, for the Court to hear this case and
13 hear about statutory rape that became repressible and violent
14 and to hear how it has affected this man's life for many years,
15 and continues to effect his life, and says perhaps until we
16 walk in his shoes, we can't totally understand how it affects
17 him emotionally. And the Court would (indiscernible) -- in
18 fact, the Court might well be persuaded that just because this
19 man came forward and syndicated his rights as a victim, that
20 doesn't mean the whole world has to know his identity.

21 So I do not agree with Mr. Scolnick's point that, at
22 some point, his name should be out there.

23 THE COURT: Well, Mr. Steigman, you know, you've given
24 me precious little to work with here. This declaration of
25 Dr. Block is subject to all of the questions that Mr. Scolnick

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1 adverted to, both orally and in his letter. And, although to
2 perhaps a lesser degree, the same could be said for
3 Mr. Bonavita's declaration.

4 If either of these people were to be proffered as a
5 trial witness, there would have to be a lot more disclosure
6 about who they are, what they do, the basis for reaching any
7 conclusions, whether they've testified in other cases in the
8 past, their compensation. You know what it is, just as well as
9 I.

10 And you are asking me to make a decision, which is not
11 as momentous as liability or no liability, but it is pretty
12 important in a nation that values public trials the way ours
13 does and where the veil of secrecy you want to draw over this
14 is potentially handicapping to the defense, which I think it
15 is. It's not certain, but it surely is potentially.

16 In addition, you have what to me is a unique
17 circumstance, and the unique circumstance is that this person
18 did not just choose to file a lawsuit about what he claims
19 happens, which is his right -- and if it happened, it was
20 awful, no doubt about that -- he decided to go to the press
21 with it in advance and long before he filed the lawsuit, years
22 before he filed the lawsuit.

23 And the people he talked to at the magazine, they know
24 who he is. They, obviously, disclosed who he is to other
25 people to whom they spoke to try to verify, to the extent they

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1 could, his story, and that's hard to reconcile with the
2 opinions I'm being asked to take on very little disclosure.

3 MR. STEIGMAN: If I could, your Honor, let me take the
4 last part first. I understand that a Court typically would
5 find it inconsequential to say that a plaintiff went to the
6 press and is now seeking anonymity. This is a very specific
7 unusual circumstance. And when my client went forward and gave
8 that interview, at that time, he (indiscernible) --

9 THE COURT: We're losing you again.

10 MR. STEIGMAN: Okay. I apologize. The only thing I
11 can do is call in, if that would be better.

12 THE COURT: Well, you were doing all right there for a
13 bit, but as you move away from the microphone, it gets worse.

14 MR. STEIGMAN: I'll stay on top of it. Again, I
15 apologize. Please let me know -- if I can't wait --

16 THE COURT: Nobody is faulting you. This is tough for
17 everybody.

18 MR. STEIGMAN: I can't wait until we're all in the
19 same room.

20 But let me make this point, your Honor. I think, for
21 the most part, I would think a Court would be most concerned
22 about parties going to the press when they're trying to
23 influence the outcome of a case, when they try to influence
24 potential jurors. That seems, to me, the biggest harm in
25 parties talking to the press.

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1 This is such a unique circumstance because at the time
2 he gave that interview, this case was time barred. He wasn't
3 doing it to settle litigation or to influence jurors. The
4 statute of limitations, at that point, had been gone for many
5 years and --

6 THE COURT: That really isn't the point. The point is
7 that if disclosure of his identity would cause him the grievous
8 harms you say -- and I don't know, maybe it would, maybe it
9 wouldn't -- how do you reconcile that with his voluntarily
10 having gone to the press?

11 MR. STEIGMAN: But they did not reveal his name.

12 THE COURT: He had no assurance going in that that
13 would be the outcome of his going to the press.

14 MR. STEIGMAN: Well, he was given that assurance, and
15 they kept their word. His name was not publicly revealed.

16 THE COURT: Yes, but in the article they wrote, they
17 said they spoke with people close to him, who said that he had
18 spoken about the relationship with Spacey as far back as the
19 1990s. Now, they couldn't have done that without saying to
20 these people, allegedly close to him, who he was.

21 MR. STEIGMAN: That's true. But, your Honor, I don't
22 think it follows that the people close to him, who know this
23 happened, equates to, well, therefore, it's not so important to
24 him if the entire world hears about it. I just don't think
25 that follows.

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1 THE COURT: But he took that chance by talking.

2 MR. STEIGMAN: It hasn't happened. There hasn't been
3 a public revelation. Now, the statute of limitations changed,
4 and he came forward to make this accusation, to say what
5 happened to him. You know, your Honor, all I can tell you, as
6 an officer of the court, most of the time I'm (indiscernible)
7 -- I'm normally arguing something that has a litigation
8 advantage.

9 I am telling you that is not our purpose here. I do
10 not believe that this actually hamstring the defendant's
11 ability to defend the case. They have the identity. They can
12 perform appropriate investigations and share it with anyone
13 with whom they need to tell to properly defend the allegations
14 in this case.

15 And I can tell you, this means everything to this man.
16 There is a shame that goes to the -- I'm not going to get --
17 they can defend it. They can say it didn't happen, but for the
18 purposes of this motion, I would ask the Court to accept that
19 these are our claims, that he was raped as a teenager, that
20 there is a self-loathing and shame that goes with that that.

21 As I said, perhaps unless you've experienced it, you
22 can't quite walk in that person's shoes, and I know what it
23 means to him. I know what it means to him. And all we're
24 saying, at this stage of the litigation, is allow him to
25 proceed with these claims without the world knowing his

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1 identity, not so we can get an edge in the case but because of
2 what effect it will have on him and how much it means.

3 You say there's precious little to work with. We
4 provided the declaration of a treater, who has seen him over
5 the years, and declaration of the plaintiff himself, who talked
6 about how devastating this public revelation would be.

7 When the defendant raised the issue that this licensed
8 social worker who, under Pennsylvania law, is permitted to
9 provide psychotherapy and form such opinions, and we believe a
10 perfectly adequate declaration, and when defendant and the
11 Court as well raised the issue as well, this is not a medical
12 doctor, we did, in reply, in response to that issue, raise in
13 opposition, submit an affidavit from a retained psychiatrist.

14 This is a retained expert, Dr. Block. And by the way,
15 expert disclosures are not even required yet. I believe
16 they're due on Friday, but we submitted the affidavit to say he
17 concurs with the opinion. So I really do believe the Court has
18 an adequate record. I do think the Court can take note of the
19 precedent and note of what we're talking about here. It just
20 doesn't seem to me very far flung to suggest that the world
21 knowing his identity would have an impact on him.

22 I do not believe that with the defendant having his
23 name and their ability to use it to question people or to
24 gather information, they really are prejudiced. They haven't
25 specifically suggested any. The Court can always revisit it,

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1 and I tell you, this is so important. Not that it's going to
2 help us win, but it's going to do damage to a human being if
3 the Court decides that the public interest in knowing who this
4 is is more important than his confidentiality.

5 THE COURT: The expert disclosure you're going to make
6 this week, will that include opinions on this subject and from
7 both witnesses?

8 MR. STEIGMAN: I'd rather not answer that, Judge. I
9 don't know -- I don't know the answer to that. If the Court
10 would find that instructive with respect to this motion, then
11 my answer is, yes, we certainly can do that, but I hadn't
12 discussed or thought about that.

13 THE COURT: All right. Mr. Scolnick?

14 MR. SCOLNICK: Thank you, your Honor. I'd like to
15 make a few points in response, and first, it's just to
16 underscore the importance and significance of CD going forward
17 and making the choice to speak to the press, making the choice
18 to reveal his name to the press, making the choice to have the
19 press go out and speak with people in his life, a number of
20 people.

21 And he took that chance, and he took the chance that
22 his name could be disclosed because he wanted to go public,
23 because he wanted to avail himself of the press. And he
24 shouldn't be able to use the press as a sword and a shield to
25 make these very damaging allegations behind the cloak of

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1 anonymity so that we can't adequately respond or defend
2 ourselves.

3 Now, to address the second point, which is there is no
4 litigation advantage, I strongly disagree. I couldn't disagree
5 any more, your Honor. The case law itself demonstrates that
6 there is an overwhelming prejudice to someone in Mr. Fowler's
7 position, to someone who is trying to defend themselves against
8 an anonymous accuser.

9 While it's true that we have CD's information, the
10 point is any other potential witnesses, any other potential
11 witnesses who could aid our defense, who could contradict CD's
12 allegations that we believe and we are confident are not
13 accurate and are false, we don't have access to those people.
14 We don't have access to those people because they don't know
15 about the case, because CD is continuing to plead anonymously,
16 to hide his identity, while he continues to make these hurtful,
17 damaging and false allegations against Mr. Fowler.

18 And, your Honor, we don't need to look past the
19 Southern District case law that says, and I quote, concealing
20 the name of a party can deprive a litigant and the Court of a
21 chance that a yet-unknown witness that upon learning the facts
22 about the case, knows to step forward with valuable information
23 about the events or the credibility of witnesses. And that's
24 not --

25 THE COURT: What's the case you're quoting?

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1 MR. SCOLNICK: *Doe v. Del Rio*, which is 241 F.R.D.
2 154, 159, that's Southern District of New York 2006. But
3 there's also another quote from *Richmond Newspapers, Inc. v.*
4 *Virginia*, which is a Supreme Court case, 448 U.S. 555 at 596,
5 and that was Justice Brennan stating, and I quote: Public
6 trials come to the attention of key witnesses unknown to the
7 parties.

8 And there are more cases, if the Court would like, but
9 the point is is that this is not speculative, your Honor. This
10 is real. CD made a choice to bring this case. He made a
11 choice to go to the press. He made a choice to file a public
12 case. We have a due process right and a need to defend
13 ourselves. Mr. Fowler has that right, and he cannot do that
14 adequately, completely consistent with due process while CD
15 maintains anonymity and hides from potential witnesses. And,
16 your Honor, the cases I cited, by the way, are in our
17 opposition, along with others.

18 THE COURT: You're not suggesting that there's a due
19 process right to the identity irrespective of other
20 considerations, are you? That is to say, to have the identity
21 public as opposed to available to you?

22 MR. SCOLNICK: I think it does infringe on our due
23 process rights, your Honor, to not be able to adequately defend
24 ourselves, to have someone plead anonymously so we don't have
25 access, full access, to the available evidence and witnesses,

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1 the witnesses who would be available if this were public. And
2 I can --

3 THE COURT: Isn't it very well established that, on a
4 proper showing, the pleadings need not contain the name of a
5 party?

6 MR. SCOLNICK: I believe there is case law to that
7 effect, your Honor, but again, it is the exception. It's the
8 exception that the party who is trying to proceed anonymously
9 must prove, and there are the Doe factors that are in the
10 Second Circuit. And we've analyzed those Doe factors, and
11 clearly, clearly CD has not met his burden with respect to any
12 of them. And I think we've provided the case law and the
13 argument. And I'd be happy to recite some of that today, but
14 again, it is the exception not the rule for a variety of
15 reasons.

16 The public's need to access the information, that's a
17 very important right. The First Amendment right of the press
18 and the people and also, your Honor, more importantly, the
19 right to Mr. Fowler, which is what we've been discussing so
20 far, all of those rights are infringed. All of those interests
21 are undermined when a litigant is permitted to proceed
22 anonymously.

23 And again, we've addressed those factors. I'd be
24 happy to address them all again, the anonymity factors, your
25 Honor. But again, it is plaintiff's burden to prove each and

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1 every one of those, and if he hasn't provided sufficient
2 evidence, which he hasn't, then those factors must weigh
3 against anonymity.

4 And, your Honor, what we have here is -- they have
5 several ways of making the allegations, and what I hear from
6 the plaintiffs is that they're beating the drum again and
7 again, assuming that this abuse happened, and then asking you,
8 based on that assumption, to adopt the rest of their argument.
9 But again, that issue is in dispute. We strongly dispute the
10 allegations, and we should have the ability to defend
11 ourselves. And again, that is necessary. And as I said
12 before, your Honor, I'd be happy to address the law. I'm
13 prepared to do so today, the defense factors.

14 THE COURT: That's not necessary.

15 Okay. Any closing words, Mr. Steigman?

16 MR. STEIGMAN: Thank you, Judge. You know, there is a
17 case, *Doe v. Colgate* in which the plaintiff did go to the
18 press, and the Court did find that disclosure of his name was
19 still inappropriate.

20 And, of course, Judge, I'm not here asking for summary
21 judgment, and that this Court should decide today that the
22 plaintiff's allegations are true and the defendant has no right
23 to defend them. He does, and that, I assume, may well be a
24 question of fact that gets determined at trial. But when it
25 comes to anonymity, I certainly think that the Court should

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1 mostly heed what the plaintiff is saying (indiscernible) and
2 what both the treating social worker and the psychiatrist are
3 saying (indiscernible) the effect has had on him and what the
4 public revelation (indiscernible) have on him --

5 THE COURT: Repeat the last part.

6 MR. STEIGMAN: When you talk about this issue of
7 prejudice, these are things that happened behind closed doors
8 30 years ago. They know the context of when they met, and the
9 classes that the plaintiff took, and all of the things and all
10 of the people that they need to talk to who might help them, if
11 they think they can find someone to provide relevant
12 information.

13 And the idea that, well, we need his name so we can
14 put it out there because now people will come out of the
15 woodwork, 30 years later, to help Kevin Spacey and provide
16 information against the plaintiff is farfetched. It does not
17 outweigh, in any way, the plaintiff's need for confidentiality
18 here.

19 THE COURT: Yes, but the whole premise here is there's
20 a need for confidentiality, and that's what I'm being asking to
21 decide, and you've given me not very much to work with, I must
22 say. So I'm going to wait until you make your expert
23 disclosures. You disclose what you want to disclose.

24 It would seem to me that if we were dealing with the
25 admissibility of the testimony of these witnesses at trial, it

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1 would either be everything rule 26 requires, or possibly
2 somewhat less but not much less, I'll let you be the judge.
3 But I'm not going to simply assume that because you hired a
4 psychiatrist, who has never treated this fellow, who said, oh,
5 yes, I agree with the social worker, that that would even be
6 admissible at a trial. And I question whether I should rely on
7 it here.

8 I know nothing about the man, nothing, or the
9 circumstances in which any of this happened, or the basis for
10 his opinion. And as to the treating, well, that's a slightly
11 different situation, but it is pretty conclusionary. And it
12 doesn't come to grips with the issue that is pre-eminent, in my
13 mind, which is how you can reconcile this position with what he
14 did in 2017, going to the press with this story at a time where
15 there was no litigation advantage. I assume you're right about
16 that. I haven't independently verified it, but I assume that.

17 That's a hard question for me. So I'll wait and see
18 what you decide to say about it, and then we'll see where we
19 are. But I appreciate the presentations. I regard this as,
20 obviously, a very serious issue. The misconduct that is
21 charged here is extremely serious, if it occurred, and if it
22 didn't, it's equally serious in a different way. It's very
23 important that I not simply make an assumption here, at least
24 it is to me.

25 MR. SCOLNICK: And, your Honor, if I can briefly

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1 respond? I think that there is sufficient evidence in the
2 record for you to make your decision. We have the information
3 that was submitted in connection with the motion, which we
4 believe is clearly insufficient. We have the information that
5 was submitted in connection with the reply, which doesn't do
6 any more.

7 We believe that this has gone on quite a bit, and that
8 we've already been prejudiced by the inability to fully access
9 discovery and these witnesses. And I note also, your Honor,
10 for the record, that there's no indication that CD has raised
11 this issue with any treater before the motion was filed. And
12 there's really nothing in the declaration of Mr. Bonavita or of
13 Dr. Block that says any different.

14 And I understand that the Court is being very careful
15 and giving them every opportunity to meet the burden, but the
16 time has passed. The motion is filed. The reply is filed.

17 And, your Honor, just one more piece of information
18 that I can say that we've learned since the motions have been
19 filed, and this is through the deposition of Mr. Rapp, who is
20 the other plaintiff. It appears that not only has CD gone out
21 publicly and made these public statements, but he's also
22 reached out to at least one other potential plaintiff
23 indirectly, because that was Mr. Rapp, and pushed him to file
24 this case.

25 So again, this is someone who is taking full advantage

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1 of his temporary anonymity, we hope temporary, and making these
2 harmful allegations and finding others to do the same. This is
3 not consistent with someone who is going to be harmed by these
4 allegations going public, especially in light of what's going
5 to come in discovery, including the deposition, including at
6 trial.

7 And it's not reasonably likely, your Honor, that CD
8 would be able to maintain his anonymity through trial. It just
9 doesn't happen. I understand that opposing counsel raised what
10 I believe to be a criminal case, which was televised many years
11 ago, but unlike that case, again, CD has made the choice to
12 file this case and do so publicly and go to the press.

13 THE COURT: Mr. Scolnick, you said he reached out to
14 Mr. Rapp.

15 MR. SCOLNICK: Yes.

16 THE COURT: Tell me about the circumstances, please.

17 MR. SCOLNICK: Your Honor, I don't have the quote from
18 the text, but my recollection is that there was another actor,
19 and CD asked the actor to reach out to Mr. Rapp to see if he
20 was interested in joining him in litigation and filing a case,
21 a case for money. That man was -- this was, I believe, was
22 earlier this year -- I'm sorry, earlier 2020 or late 2019.

23 THE COURT: Before or after this case was filed?

24 MR. SCOLNICK: Before the case was filed. So before
25 the case -- I'm sorry.

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1 THE COURT: And so this other actor knows who he is,
2 too?

3 MR. SCOLNICK: Yes, your Honor. So I think we're
4 finding there's a growing number of people who are aware of
5 this. It's not that -- and remember where we started, on page
6 15 of plaintiff's motion. They claim that the press was
7 unaware of his identity. Now we know that not to be true, and
8 every time we keep digging, there are more and more people who
9 are aware of this man's identity. Not only, as the Court
10 correctly noted, not only just the author of the article,
11 Mr. Jung, but also all the other witnesses.

12 And now we're finding out, through the deposition,
13 that there are even more witnesses from Mr. Rapp -- Mr. Rapp's
14 deposition, there are even more witnesses who are aware of CD's
15 allegations. And CD is affirmatively reaching out, indirectly,
16 to find other plaintiffs.

17 And again, it's our argument, your Honor, that this
18 has gone on long enough. And I assume that there will be more
19 people when we keep poking around. But the bottom line is,
20 we're on a very short timeline here, and we need to prepare for
21 trial. We need to find these witnesses.

22 THE COURT: Is there a deposition transcript that
23 supports this reaching out to Mr. Rapp thing that you just
24 dropped into this?

25 MR. SCOLNICK: I think we got the transcript maybe

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1 Friday night or Saturday, your Honor.

2 MR. STEIGMAN: Jeff, my understanding is the other
3 actor is Mr. Rapp, the co-plaintiff, who we represent.

4 MR. SCOLNICK: Just to clarify, Mr. Rapp is the
5 co-plaintiff, but the other person who CD reached out to was a
6 third party, not Mr. Rapp directly. So that means there's, in
7 addition to Mr. Rapp, there's at least one other person who is
8 aware of this.

9 THE COURT: You better file the relevant piece of the
10 deposition transcript.

11 MR. SCOLNICK: Yes, your Honor.

12 THE COURT: Any objection to that, Mr. Steigman?

13 MR. STEIGMAN: No, your Honor. It's worth noting, by
14 the way, Mr. -- when I said this was no litigation advantage,
15 Mr. Rapp is not proceeding anonymously, nor have we ever sought
16 that. He has his own celebrity. He has made his peace with
17 making these allegations public to him, and we haven't asked
18 the Court that. So again, I just -- it's not a game. You
19 know, it's something very important to our client.

20 THE COURT: No, look, Mr. Steigman, I don't for a
21 second question the motives of counsel here, not for one
22 second. You have a job to do, and I respect it. And you're
23 doing what you feel your client needs and/or wants, and I'm
24 trying to get to the bottom of the question of needs.

25 MR. STEIGMAN: Yes, your Honor.

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1 THE COURT: Okay.

2 MR. SCOLNICK: Your Honor, we will file the
3 supplemental evidence today.

4 THE COURT: Okay. Fine. Anything else before we sign
5 off?

6 MR. STEIGMAN: Not from me. Thank you, your Honor.
7 Thank you for your time.

8 MR. SCOLNICK: No, your Honor. Thank you.

9 THE COURT: Okay. Thank you, counsel. I appreciate
10 it.

11 (Adjourned)

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